

HOUSE No. 2386

By Mr. Casey of Winchester, petition of Paul C. Casey for legislation to make certain changes in the room occupancy excise tax law. Revenue.

The Commonwealth of Massachusetts

In the Year Two Thousand and Five.

AN ACT RELATIVE TO THE MODERNIZATION OF THE ROOM OCCUPANCY EXCISE.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 16 of chapter 62C of the General Laws,
2 as appearing in the 2002 Official Edition, is hereby amended by
3 inserting after the word “operator” in line 53 the following
4 words:— or room reseller.

1 SECTION 2. Section 25 of chapter 62C of the General Laws,
2 as so appearing, is hereby amended by inserting after the word
3 “operator” in line 6 the following words:— or room reseller.

1 SECTION 3. Section 67 of chapter 62C of the General Laws,
2 as so appearing, is hereby amended by inserting after the word
3 “operator” in line 2 the following words:— or room reseller.

1 SECTION 4. Section 1 of chapter 64G of the General Laws, as
2 so appearing, is hereby amended by adding after paragraph (b)
3 thereof the following paragraph:—
4 (b½) “Doing business in the commonwealth”, ownership or
5 operation of a bed and breakfast establishment, hotel, lodging
6 house or motel that is located in the commonwealth, maintenance
7 otherwise of a place of business in the commonwealth, the pres-
8 ence of an employee in the commonwealth on more than a de min-
9 imis basis, solicitation in the commonwealth of orders for transfer

10 of occupancy of accommodations located in the commonwealth,
11 solicitation in the commonwealth by a reseller of a contract or
12 other cooperative arrangement with an operator with respect to
13 accommodations located in the commonwealth, inspection in the
14 commonwealth of accommodations that may be the subject of a
15 cooperative arrangement between an operator and a reseller, or
16 other exploitation of the market for accommodations or resale of
17 accommodations located in the commonwealth by any means
18 whatsoever, including, but not limited to, salesmen, solicitors or
19 representatives in the commonwealth, whether such salesmen,
20 solicitors or representatives are employed by the operator or
21 reseller, by a person affiliated with the operator or the reseller by
22 common ownership, or by any other party. This definition is
23 intended to extend the jurisdiction of the commonwealth over
24 operators and resellers to the full extent authorized by the consti-
25 tution and the laws of the United States; provided, however, that
26 nothing in this paragraph shall be interpreted as authorizing asser-
27 tion of jurisdiction over an operator or reseller that lacks a direct
28 physical presence in the commonwealth or a physical presence
29 attributed to it by virtue of activities conducted on its behalf by
30 another person.

1 SECTION 5. Section 1 of chapter 64G of the General Laws, as
2 so appearing, is hereby further amended by inserting after the
3 word “operator”, in line 49 thereof, the following words:— or the
4 room reseller.

1 SECTION 6. Section 1 of chapter 64G of the General Laws, as
2 so appearing, is hereby further amended by inserting at the end
3 thereof the following new subsection:—

4 (k) “Room Reseller” or “Reseller”, any person having any
5 right, permission, license, or other authority from or through an
6 operator to reserve or arrange transfer of occupancy of accommo-
7 dations the transfer of which is subject to this chapter, such that
8 the occupant pays all or a portion of the rent to the reseller, but
9 such term shall not include a tour operator.

1 SECTION 7. Chapter 64G of the General Laws, as so
2 appearing, is hereby further amended by striking Section 3 thereof
3 and inserting in place thereof the following section:—

4 An excise is hereby imposed upon the transfer of occupancy of
5 any room or rooms in a bed and breakfast establishment, hotel,
6 lodging house, or motel in this commonwealth by any operator or
7 room reseller doing business in the commonwealth at the rate of
8 five per cent of the total amount of rent for each such occupancy.
9 No excise shall be imposed if the total amount of rent paid by the
10 occupant is less than fifteen dollars per day or its equivalent.

11 The operator or room reseller shall pay the excise to the com-
12 missioner at the time provided for filing the return required by
13 section sixteen of chapter sixty-two C.

1 SECTION 8. Section 3A of chapter 64G, as so appearing, is
2 hereby amended by striking the first three sentences thereof and
3 inserting in their place the following three sentences:—

4 Any city or town which accepts the provisions of this section
5 shall be authorized to impose a local excise tax upon the transfer
6 of occupancy of any room or rooms in a bed and breakfast estab-
7 lishment, hotel, lodging house or motel located within such city or
8 town by any operator or room reseller at a rate up to, but not
9 exceeding, four per cent of the total amount of rent paid by the
10 occupant for each such occupancy; provided, however, that the
11 city of Boston is hereby authorized to impose such local excise
12 upon the transfer of occupancy of any room in a bed and breakfast
13 establishment, hotel, lodging house or motel located within said
14 city by any operator or room reseller at the rate of up to but not
15 exceeding 4.5 per cent of the total amount of rent paid by the
16 occupant for each such occupancy. No excise shall be imposed if
17 the total amount of rent paid by the occupant is less than fifteen
18 dollars per day or its equivalent or if the accommodation is
19 exempt under the provisions of section two of this chapter. The
20 operator or room reseller shall pay the local excise tax imposed
21 under the provisions of this section to the commissioner at the
22 same time and in the same manner as the excise tax due the com-
23 monwealth.

1 SECTION 9. Chapter 64G of the General Laws, as so
2 appearing, is hereby further amended by adding after Section 3A
3 thereof the following section:—

4 Section 3B. Notwithstanding any other provision of this
5 chapter, in cases in which occupancy is transferred through the
6 use of a room reseller, the application of the excise shall be as
7 follows:

8 If the room reseller is required to register under Section 6 of
9 this chapter to collect the excise, the room reseller shall collect
10 and pay to the commissioner the excise upon the amount of rent
11 paid by the occupant to the room reseller, less the amount of rent
12 that the reseller has paid to the operator.

13 Whether or not the room reseller is so registered, the operator
14 shall collect and pay to the commissioner the excise upon the
15 amount of rent paid to the operator by the reseller or the occupant.

1 SECTION 10. Chapter 64G of the General Laws, as so
2 appearing, is hereby further amended by striking section 4 thereof
3 and inserting in place thereof the following section:—

4 Reimbursement for the excise imposed under sections 3 and 3A
5 of this chapter shall be paid by the occupant or the room reseller
6 to the operator and by the occupant to the room reseller, as the
7 case may be, and each operator and room reseller doing business
8 in the commonwealth shall add to the rent and shall collect from
9 the occupant or the room reseller the full amount of the excise
10 imposed, in accordance with the requirements of sections 3 and
11 3A of this chapter, and such excise shall be a debt to the operator
12 or room reseller, when so added to the rent, and shall be recover-
13 able at law in the same manner as other debts.

1 SECTION 11. Chapter 64G of the General Laws, as so
2 appearing, is hereby further amended by striking Section 5 thereof
3 and inserting in place thereof the following section:—

4 The amount of the excise collected by the operator or the room
5 reseller under the provisions of this chapter shall be stated and
6 charged separately from the rent and shown separately on any
7 record thereof at the time the transfer of occupancy is made, or on
8 any evidence of such transfer issued or used by the operator or the
9 room reseller.

1 SECTION 12. Chapter 64G of the General Laws, as so
2 appearing, is hereby further amended by striking Section 6 thereof
3 and inserting in place thereof the following section:—

4 No person shall operate a bed and breakfast establishment,
5 hotel, lodging house or motel in this commonwealth, or do busi-
6 ness as a room reseller in the commonwealth, unless a certificate
7 of registration has been issued to him in accordance with
8 Section 67 of chapter 62C.

1 SECTION 13. Section 7A of Chapter 64G of the General
2 Laws, as so appearing, is hereby amended by inserting after the
3 word “operator” in line 1 the following words:— or room reseller.

1 SECTION 14. Section 7A of Chapter 64G of the General
2 Laws, as so appearing, is hereby further amended by inserting
3 after the word “operator” in line 7 the following words:— or room
4 reseller.

1 SECTION 15. Chapter 64G of the General Laws, as so
2 appearing, is hereby further amended by striking Section 7B
3 thereof and inserting in place thereof the following section:—

4 Every operator or room reseller who fails to pay to the commis-
5 sioner any sums required to be paid by this chapter shall be per-
6 sonally and individually liable therefor to the commonwealth.
7 The terms “operator” and “room reseller”, as used in this section,
8 include an officer or employee of a corporation, or a member or
9 employee of a partnership, who as such officer, employee or
10 member is under a duty to pay over the taxes imposed by this
11 chapter.

1 SECTION 16. Section 12 of Chapter 64G of the General Laws,
2 as so appearing, is hereby amended by inserting after the word
3 “operator” in line 5 the following words:— and each room
4 reseller.

1 SECTION 17. The commissioner may promulgate rules and
2 regulations necessary to implement sections 1 through 16 hereof.

1 SECTION 18. This act shall be effective for transfers of occu-
2 pancy taking place on or after January 1, 2005.